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No. 747

In the Supreme Court of the United States

OCTOBER TERM, 1935

HENRY A. WALLACE, SECRETARY OF AGRICULTURE, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, HOMER CUMMINGS, ATTORNEY GENERAL, AND DANIEL C. ROPER, SECRETARY OF COMMERCE, SITTING AS A COMMISSION UNDER THE GRAIN FUTURES ACT, PETITIONERS

v.

ARTHUR W. CUTTEN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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PETITION

The Solicitor General, on behalf of the petitioners, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit, entered in the above cause on November 25, 1935 (R. 483–484), which reversed an order made by petitioners, sitting as a Commission under the Grain Futures Act.

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit (R. 479) has not been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Seventh Circuit sought to be reviewed was entered on November 25, 1935. (R. 483.) The jurisdiction of this Court is invoked under Section 6 (b) of the Grain Futures Act (c. 369, 42 Stat. 1001) and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Section 6 (b) of the Grain Futures Act (Appendix, *infra,* p. 26) provides that if the Secretary of Agriculture has reason to believe that any person "is violating" any of the provisions of the Act or of any of the rules and regulations made pursuant thereto or is attempting to manipulate the market price of grain in violation of the provisions of the Act, the Secretary may serve upon that person a complaint stating his charge in that respect and, after a hearing, as provided for in the Section, the Commission established by the Act may enter an order directing all contract markets to refuse trading privileges to that person for such period as the order may specify. A complaint was served upon the respondent herein on April 11, 1934, charging that in 1930 and 1931 he violated the provisions of the

Grain Futures Act and the regulations made thereunder by (1) failing to report his commitments and trades in grain futures; (2) making false reports with respect to such commitments and trades; and (3) attempting to manipulate the price of grain. After a hearing, the Commission, on February 12, 1935, made findings sustaining the charges and ordered all contract markets to deny trading privileges to respondent for a period of two years.

The question presented is whether Section 6 (b) authorizes the Commission to order all contract markets to deny trading privileges to respondent because of violations of the Act committed more than two years prior to the institution of proceedings against him.

STATUTE INVOLVED

The pertinent provisions of the Grain Futures Act are set forth in the Appendix (*infra,* pp. 21–27).

STATEMENT

On April 11, 1934, the Secretary of Agriculture served on respondent a complaint alleging that respondent during the years 1930 and 1931 was, and now is, a member of the Board of Trade of the City of Chicago, a duly designated contract market; that during 1930 and 1931 respondent was required, by regulations made pursuant to the provisions of the Grain Futures Act, to report to the Grain Futures Administration (a) his net position in wheat futures owned and controlled by him when he

had net open commitments in any one grain future equal to or in excess of 500,000 bushels, and (b) his daily trades in wheat futures in which he owned or controlled open commitments equal to or in excess of 500,000 bushels; that during the years 1930 and 1931 respondent conspired with persons and firms through whom he dealt to conceal his position and trades on the Chicago Board of Trade in an attempt to manipulate the price of grain; that he made false reports to the Grain Futures Administration; and that he failed and refused to report his trades in wheat futures and his position in the market in violation of the Grain Futures Act and the rules and regulations made pursuant thereto (R. 10–25). Respondent filed no formal answer but at the hearings his counsel denied all these allegations (R. 32). Hearings were held before a referee and oral testimony was taken (R. 26–257). This testimony was transmitted to the Commission and written briefs were filed. Thereafter, the Commission heard oral argument on the issues. On February 12, 1935, the Commission handed down its written opinion (R. 451–464), findings of fact and conclusion sustaining the charges of the Secretary of Agriculture (R. 464–466), and an order was entered directing all contract markets to refuse all trading privileges thereon to Arthur W. Cutten for a period of two years from March 1, 1935 (R. 466).

On February 28, 1935, the respondent filed a petition in the United States Circuit Court of Appeals for the Seventh Circuit praying that the Court review the order entered by the Commission (R. 2). On November 25, 1935, the Circuit Court of Appeals rendered an opinion in which it held (1) that the evidence before the Commission fully supported its findings and its conclusion that respondent had violated the provisions of the Act, and the regulations made pursuant thereto, and (2) that Section 6 (b) applied only to continuing offenses and consequently that the Commission had no power under that Section to deny respondent trading privileges for violations of the Act committed two years prior to the institution of proceedings against him (R. 479–483).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Seventh Circuit erred:

(1) In holding that under Section 6 (b) of the Grain Futures Act the Commission had no power to order all contract markets to deny respondent trading privileges because of violations of the Act committed more than two years prior to the institution of proceedings against him; and

(2) In reversing the order of the Commission.

REASONS FOR GRANTING THE WRIT

The question of law here presented is one of great public importance which should be passed upon by this Court.

One of the primary purposes of the Grain Futures Act is to prevent manipulation of the price of grain. *Board of Trade* v. *Olsen,* 262 U. S. 1, 37. The construction of Section 6 (b) of the Act adopted by the Circuit Court of Appeals thwarts this purpose. The provisions of the Act with respect to the making of reports by members of Boards of Trade are an important part of the statutory scheme. The Act authorizes the Secretary of Agriculture to designate a Board of Trade as a contract market only when the governing board thereof provides for the filing by its members of reports of transactions in grains in accordance with rules and regulations prescribed by the Secretary of Agriculture. Section 6 (b) attempts to provide for enforcement of the reporting requirements against individual traders. It provides that if the Secretary of Agriculture has reason to believe that any person "is violating" any of the provisions of the Act or of the rules and regulations made thereunder, or is attempting to manipulate the price of grain, he may serve upon that person a complaint stating his charge in that respect. Provision is made for a hearing. If the evidence adduced at the hearing sustains the complaint of the Secretary of Agriculture, the Commission may require all contract markets to refuse the person trading privileges for such period as the Commission may spec-

ify. The importance of the reporting requirements is too obvious to require emphasis.[1]

The Circuit Court of Appeals in this case has construed Section 6 (b) as applying only to *existing or continuing violations* and as not authorizing the Commission to deny trading privileges because of violations which are completed transactions. It conceded that this construction of the Section rendered it virtually nugatory, saying (R. 482):

> Respondents argue that although the statute uses the present tense, it should be so construed as to include past transactions. A rather strong and persuasive argument is made in favor of the wisdom of such a construction *without which the power to deal with an offender is almost nil.* (Italics supplied.)

That the Circuit Court of Appeals is correct in this estimate of the effect of its decision can hardly be disputed. Its construction of Section 6 (b) eviscerates the Section and leaves the Commission virtually powerless to prevent violations of the reporting requirements by traders and otherwise very

[1] In *Bartlett Frazier Co.* v. *Hyde*, 65 F. (2d) 350, certiorari denied 290 U. S. 654, the Circuit Court of Appeals for the Seventh Circuit said with respect to the Act (p. 352): "Without the unqualified duty to report and the untrammeled right of inspection, the efficacy of the act would be unduly restricted * * *."

severely curtails the power of the Commission to prevent the manipulation of the price of grain.[2]

The situation is particularly serious with respect to the reporting requirements because it is virtually impossible to apprehend a trader *in the act of violating those requirements.* If the regulations made under the Act require a report to be filed by a certain time, the offense of failing to report is not complete until that time has passed and no report has been filed. There is no making of a false report until the false report is filed, and when it is filed the offense belongs to the past and not to the present. The very nature of these offenses makes it impossible for them to be *existing* or *continuing.* They are born and fall into the class of past transactions at one and the same moment. Apprehension cannot be contemporaneous with commission. Even if the failure to report or the making of false reports continues from day to day over an interval of time, the Commission can be deprived of jurisdiction by the making of one accurate report, because that would presumably destroy the continuing character of the offenses and place the reports theretofore made or the previous failure to report in the category of completed transactions. It is

[2] It is true that Section 6 (a) permits the Commission to suspend or revoke the designation of a board of trade as a contract market upon a showing that the board has failed or is failing to comply with any of the requirements of the Act or is not enforcing the rules of government made a condition of its designation. Manipulation of price, however, is always the work of individual traders. To be effective, a preventative statute must operate directly on them.

almost equally difficult under this construction for the Commission otherwise to take action with respect to manipulations of the price of grain. Secrecy is essential to manipulation and the making of false reports or the failure to make any reports whatsoever is essential to secrecy. If it is deprived of its power to enforce the reporting requirements the Commission loses its most effective tool for the detection of a continuing manipulation. Furthermore, because price manipulation is accomplished in secret and (as in the instant case) by the splitting of accounts among a large number of commission houses its apprehension is difficult and requires a long and detailed examination of numerous books of account.[3] Hence, the process of detection usually cannot be completed until the at-

[3] In the instant case the respondent so effectively concealed his transactions in grain futures by splitting his accounts and dividing them among various commission houses that the Grain Futures Administration required two years to discover the magnitude and seriousness of his market operations. (R. 172–173.) The nature of the task which the Grain Futures Administration must perform in tracing concealed market operations is indicated by the following circumstances in the instant case: The purchase of each 5,000 bushels of grain is represented by a separate entry in the street book of the commission firm making the purchase (R. 34). From time to time respondent's commitments in all grain futures amounted to millions of bushels. For example, on June 23, 1930, respondent was short 7,725,000 bushels of wheat (Ex. 411, R. 404). To discover these commitments it was necessary to examine upwards of 1,500 entries on street books. And the street book is not the only book of account involved. There are also orders, grain ledgers, confirmations, purchase and sale statements, and financial ledgers, all of which have to be examined.

tempt to manipulate has been consummated or abandoned. Apprehension of a trader in the very act of manipulation is almost impossible.

It should be noted that no question of fact is raised by petitioners. The Circuit Court of Appeals found that the findings of the Commission with respect to respondent's violation of the provisions of the Grain Futures Act and regulations made thereunder were fully supported by the evidence. With respect to this point the court said (R. 481):

> It is sufficient to say that the evidence amply supports the findings. It points persuasively to the conclusion that Cutten repeatedly, knowingly, and intentionally, during the deep depression years of 1930 and 1931, when agriculture was waging its losing battle for existence on account of low and ever lower prices, violated and flouted that provision of the rules and regulations promulgated pursuant to the authority of the statute which required him as a dealer to report the fact that he was short more than 500,000 bushels in any one future.

If the decision of the Circuit Court of Appeals is permitted to stand, the Commission will be virtually powerless to prevent manipulation of the price of grain, and the purpose of Congress to pro-

tect producers, consumers, and persons handling grain in interstate commerce against the detrimental effects of such manipulation will fail of accomplishment.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be granted.

STANLEY REED,
Solicitor General.

FEBRUARY, 1936.

BRIEF IN SUPPORT OF PETITION*

ARGUMENT

I

SECTION 6 (b) SHOULD BE CONSTRUED SO AS TO GIVE IT A REASONABLE AND PRACTICAL MEANING

The issue here presented is, what interpretation shall be given to the words "is violating" and "is attempting to manipulate" in Section 6 (b) of the Grain Futures Act. Petitioners contend that these words, properly read, cover past violations of the Act as well as present and continuing ones. The respondent contends that these words permit the Commission to proceed against a trader only if he is apprehended *flagrante delicto,* and the Circuit Court of Appeals adopted this interpretation.

This is not a case where the court is asked to choose between two possible meanings of a statute merely on the ground that the balance of convenience rests with one rather than the other. The choice here is between meaning and nullity. It has been pointed out in the petition that if the construction of the Circuit Court of Appeals is correct, Section 6 (b) is robbed of all vitality, its language loses all significance, and the Act as a whole stands as if Section 6 (b) had never been included. The

* Opinions below, jurisdiction, questions presented, statute involved, statement, and specification of errors to be urged, which are set out in the petition, pp. 2–5, will not be repeated here.

Grain Futures Act is designed to prevent manipulation of the price of grain. Manipulation is the work of individual traders. Section 6 (b) purports to set up machinery for the control of traders, and the enforcement of the reporting requirements made by the Secretary of Agriculture is the mainspring of that machinery. Violation of those requirements cannot, except in the rarest case, be a continuing or present offense. To give literal import to the words "is violating" and "is attempting to manipulate", as the Circuit Court of Appeals did, is to prevent Section 6 (b) from accomplishing the purpose for which it was placed in the law. It is submitted that there is no dogma of literal construction which calls for this result.

This Court has not hesitated to deviate from the strict literal meaning of words in a statute to avoid an absurd and impracticable result and to give the statute meaning. Thus, it has limited the scope of statutes when a literal reading of their words would have led to an absurd or unreasonable consequence. *Church of the Holy Trinity* v. *United States,* 143 U. S. 457; *United States* v. *Kirby,* 7 Wall. 482; *Reiche* v. *Smythe,* 13 Wall. 162. In similar circumstances it has sometimes extended the literal meaning of a statute. See *Silver* v. *Ladd,* 7 Wall. 219; *United States* v. *Lacher,* 134 U. S. 624; *United States* v. *Katz,* 271 U. S. 354; *Sorrells* v. *United States,* 287 U. S. 435.

This Court has also changed the tense of a verb when it was necessary to do so in order to accomplish the true intent of a statute. See *Huide-*

koper's Lessee v. *Douglass,* 3 Cranch 1 ("residing" construed as "to reside"); *Rutherford* v. *Greene's Heirs,* 2 Wheat. 196 ("shall be" construed, in effect, to mean "is"). A recent decision of the Circuit Court of Appeals for the Fifth Circuit is directly in point and illustrates the proper rule to be applied in the instant case. *The Sterling,* 65 F. (2d) 439. This case came to the Circuit Court of Appeals on appeal from decrees adjudging two coastwise vessels to be forfeited for having been engaged in a trade other than that for which they were licensed. It was contended by the appellants that the libels failed to allege, and the facts failed to establish, cause for forfeiture, because it appeared that the vessels were not at the time of their respective seizures engaged in violating their licenses, but the violations had occurred at some prior time. The statute there involved (R. S. sec. 4377) provided in part that "Whenever any licensed vessel * * * *is* employed in any other trade than that for which she is licensed * * * such vessel * * * shall be forfeited." The Circuit Court of Appeals affirmed the decree, saying (at p. 440):

> The construction appellants contend for leads to absurd results. They say that, because the statute uses the word "is" rather than the words "has been" with reference to the forbidden "transfer" and the forbidden business, it speaks only in the present tense, relates alone to the facts existing at the time of seizure, and operates to forfeit

only when seizure and violation are contemporaneous. Under such construction such a vessel could be transferred with impunity as the owner willed, for it would be impossible for officers to exercise such close surveillance as that the act of transfer could not be accomplished except in their sight. Under such construction, a vessel could go in and out of her licensed trade whenever not directly under the eye of some seizing officer. The statute intended no such far-fetched result. It does not so provide. In using the words "is transferred" and "is employed", it used them in a preterit sense, to define a status brought about by the forbidden act with consequent forfeiture.[1]

II

THE OTHER PROVISIONS OF SECTION 6 (b) SHOW THAT IT WAS INTENDED TO COVER PAST VIOLATIONS AS WELL AS PRESENT AND CONTINUING ONES

If Congress had intended Section 6 (b) to apply only to continuing or present violations, it seems obvious that it would have provided for a summary procedure by which the market operations of violators could be stopped at once. It is significant that the section does not do this. It does not provide for cease and desist orders such as the Federal

[1] For cases in which state courts have changed the tense of verbs in order to prevent a statute from being meaningless, see *Hayden* v. *Ortkeiss*, 83 Ky. 396; *Maysville & Lexington R. R. Co.* v. *Herrick*, 76 Ky. 122; *Malloy* v. *Chicago & Northwestern R. Co.*, 109 Wis. 29, 85 N. W. 130.

Trade Commission is authorized to issue, or for any other remedy in the nature of a temporary injunction by which a continuing violation can be summarily stopped. It does provide for three days' notice and a hearing preceding the denial of trading privileges. The evidence at the hearing must be reduced to writing and transmitted to the Secretary of Agriculture as Chairman of the Commission. The Commission consists of three members of the President's Cabinet who are charged with many other duties and responsibilities under various other Acts of Congress. After the Commission has made its order, provision is made for judicial review by the Circuit Court of Appeals and the Supreme Court. It is clear that, pending this review, the Commission's order may be stayed.[2] Far from being summary, this procedure requires a considerable period of time.[3] Thus, the very machinery of enforcement and judicial review provided for in Section 6 (b) shows that the section was not intended to be restricted in its application to present or continuing offenses.

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[2] The language of Section 6 (b) authorized the Circuit Court of Appeals to grant such equitable relief as seems just. Such relief doubtless includes the granting of an order staying the enforcement of the Commission's order. A stay was granted in the instant case. (R. 2.)

[3] In the instant case the complaint against respondent was served on April 11, 1934. The Commission's order was not issued until February 12, 1935. The Circuit Court of Appeals did not hand down an opinion with respect to the respondent's petition for review until November 25, 1935.

III

THE LANGUAGE OF SECTION 6 (a) IS NOT INCONSISTENT WITH PETITIONERS' INTERPRETATION OF SECTION 6 (b)

In construing Section 6 (b) as it did, the Circuit Court of Appeals relied chiefly upon the fact that Section 6 (a), which provides for proceedings against contract markets, uses the words "has failed or is failing" (R. 483). It is submitted that this fact is not conclusive of the meaning of Section 6 (b).

It may be conceded that when different words are used in different parts of a statute, and their use is deliberate and premeditated, the difference in language may properly be regarded as mirroring a difference in intent. But when this rule is applied mechanically, irrespective of the circumstances under which the words were chosen, and in disregard of the results which will follow, it ceases to be a useful canon of construction and becomes a mischievous fiction. If the words of Section 6 (a) and 6 (b) are viewed realistically and in the light of their legislative history, it is clear that in this case the difference in language has no significance.

The assumption underlying the contention that difference in language always reflects difference in intent is that the same draftsman has chosen different words to achieve a different result. In the case of Sections 6 (a) and 6 (b), however, this assumption is without foundation. These sections had

their genesis in the Future Trading Act which was passed by the 67th Congress on August 24, 1921.[4] The Act was introduced in the House (H. R. 5676) and, as introduced, contained a Section 6 (a) similar to Section 6 (a) of the Grain Futures Act. It did not include Section 6 (b) or any analogous provision. Section 6 (b) was added by the Senate Committee on Agriculture and Forestry in substantially the same form in which it appears in the Grain Futures Act, including the words "is violating." (See Senate Report 212, 67th Cong., 1st Sess.) Section 6 (b) was printed in the Conference Report made by the House Committee (House Reports 345, 362, 67th Cong., 1st Sess.) but was not discussed.

Thus, in fact, Sections 6 (a) and 6 (b) originated in different committees and were not drafted by the same persons. The difference in wording was doubtless inadvertent and not deliberate and premeditated. This is the conclusion which must be drawn from the apparent belief of the Senate Committee that it was adding a section which accomplished the same result with respect to indi-

[4] The Future Trading Act was held unconstitutional by this Court in *Hill* v. *Wallace*, 259 U. S. 44. Thereafter, at the second session of the 67th Congress, the Grain Futures Act was passed (42 Stat. 998). Sections 6 (a) and 6 (b) of the Grain Futures Act were substantially the same as Sections 6 (a) and 6 (b) of the Future Trading Act. The legislative history of the Grain Futures Act throws no additional light on the meaning of Section 6 (b).

vidual traders that Section 6 (a) accomplished with respect to contract markets. Senator Capper, one of the sponsors of the bill and a member of the Senate Committee on Agriculture and Forestry which added Section 6 (b) to the Act, made statements in the debate in the Senate, after Section 6 (b) had been added, which clearly show that he thought it conferred authority to proceed with respect to past violations of the Act as well as present or continuing ones. He declared:

> The bill then vests with the Secretary of Agriculture power, subject to court review, to investigate an individual member who is charged with disseminating false crop reports or manipulating prices, and, upon finding that such individual *has been guilty* of such practices, to suspend him from trading privileges of contract markets. (Italics supplied). (61 Congressional Record, Part 5, p. 4762.)

And again he stated:

> When it comes to the matter of enforcing the law, that power must be in some one. It would be absurd to enact a law without providing for its enforcement. Aside from the usual penalty clause two methods are used. One of them was placed in the bill at the suggestion of the exchanges, and that was to provide that in case one member of a board of trade *manipulated prices* or *circulated false reports* the Secretary of Agriculture, after a hearing, shall suspend him from the

privileges of future trading. [Italics supplied.] (61 Congressional Record, part 5, p. 4764.)[5]

In the face of this legislative history it is unreasonable to regard the language of Section 6 (a) as decisive of the question here presented. The presence of the words "has failed" in Section 6 (a) does not preclude the court from giving to Section 6 (a) an interpretation which is not absurd and impracticable.

CONCLUSION

It is respectfully submitted that the public interest will be promoted by the granting of this petition and the decision by this Court of the question involved.

STANLEY REED,
Solicitor General.

FEBRUARY, 1936.

[5] Light is thrown on the intention of the Senate Committee in adding Section 6 (b) of the law by the nature of some of the testimony given by witnesses in the hearings before that Committee. A number of witnesses testified that they thought the Act should contain a section permitting action against individual traders as well as against contract markets under Section 6 (a). Presumably the scope of authority over traders was to be as wide as that over contract markets. See *Hearings before the Committee on Agriculture and Forestry of the United States Senate on H. R. 5676*, pp. 85, 151–3, 216, 277, 301, 335–337, 408–410. Admittedly, the statements of these witnesses are not authority with respect to the interpretation of Section 6 (b) but they have some probative value with respect to the motives which caused the Senate Committee to add that section to the Act.

APPENDIX

The Grain Futures Act of September 21, 1922, c. 369, 42 Stat. 998, 999, 1000, 1001 (U. S. C., Title 7, Secs. 5, 7, 8), provides, in part, as follows:

> SEC. 3. Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and by-products thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in inter-

state commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

* * * * *

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the differences in value between the various grades of such grain, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the purpose.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a

record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices or the cornering of any grain by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in cash grain business, if such association has complied, and agrees to comply, with such terms

and conditions as are or may be imposed lawfully on other members of such board: *Provided,* That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided,* That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place

of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further*, That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application

therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b) If the Secretary of Agriculture has reason to believe that any person is violating any of the provisions of this Act, or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof, or of any of the rules or regulations made pursuant to its requirements, he may serve upon such person a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the said commission refuse all trading privileges thereon to such person. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the said commission, or before a referee designated by the Secretary of Agriculture, who shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture as chairman of the said commission. That for the purpose of securing effective enforcement of the provisions of this Act the provisions, including penalties, of section 12 of the Interstate Commerce Act, as amended, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are

made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture, the said commission, or said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received the said commission may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in said order. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission by delivering such copy to its chairman or to any member thereof, and thereupon the commission shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the commission, and the findings of the commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. In proceedings under paragraphs (a) and (b) the judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

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